

# Union Calendar No. 20

108TH CONGRESS  
1ST SESSION

# H. R. 5

## [Report No. 108-32, Parts I and II]

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2003

Mr. GREENWOOD (for himself, Mr. MURTHA, Mr. COX, Mr. SENSENBRENNER, Mr. TAUZIN, Mr. THOMAS, Mr. GOODE, Mr. FERGUSON, Mr. GERLACH, Mrs. CAPITO, Mr. FEENEY, Mr. KIRK, Mrs. BIGGERT, Mr. PLATTS, Mr. SHAYS, Mr. FRELINGHUYSEN, Mr. MURPHY, Mr. PETERSON of Minnesota, Mr. LUCAS of Kentucky, Mr. STENHOLM, Mr. TAYLOR of Mississippi, Mr. HOBSON, Ms. GRANGER, Mrs. JOHNSON of Connecticut, Ms. DUNN, Mr. ROGERS of Michigan, Ms. GINNY BROWN-WAITE of Florida, Mr. HAYES, Mr. LEACH, Mr. OTTER, Mr. GRAVES, Mr. LATOURETTE, Mr. FLETCHER, Mr. WELDON of Florida, Mr. TIBERI, Mr. HAYWORTH, Mr. CRANE, Mr. PORTMAN, Mr. SULLIVAN, Mr. SOUDER, Mr. CANNON, Mr. SHAW, Mr. MCHUGH, Mr. MCKEON, Mr. LEWIS of Kentucky, Mrs. NORTHUP, Mr. SESSIONS, Mr. HULSHOF, Mr. PUTNAM, Mr. GILCHREST, Mr. KNOLLENBERG, Mr. HOUGHTON, Mr. REGULA, Mr. TOM DAVIS of Virginia, Mr. FORBES, Mr. PETERSON of Pennsylvania, Mr. LOBIONDO, Mr. BOEHLERT, Mr. NUSSLE, Mr. SHUSTER, Mr. TIAHRT, Mr. STEARNS, Mr. GILLMOR, Ms. HART, Mr. WALSH, Mr. CRENSHAW, Mr. BARTON of Texas, Mr. KELLER, and Mr. COLLINS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MARCH 11, 2003

Additional sponsors: Mr. GOODLATTE, Mr. BURGESS, Mr. PICKERING, Mrs. KELLY, Mr. TOOMEY, Mr. CHABOT, Mr. PENCE, Mrs. EMERSON, Mr. ROGERS of Alabama, Mr. SMITH of Texas, Mr. MCINNIS, Mr. BORDALLO, Mr. GINGREY, Mr. EVERETT, Mr. MICA, Mrs. JO ANN DAVIS of Virginia,

Mr. CUNNINGHAM, Mr. BURR, Mr. DREIER, Mr. CANTOR, Mr. GALLEGLY, Mr. GARY G. MILLER of California, Mr. NEY, Mr. RADANOVICH, Mr. FOSSELLA, Mr. WAMP, Mr. WELLER, Mr. KINGSTON, Mr. WHITFIELD, Mr. THORNBERRY, Mr. WOLF, Mr. PITTS, Mr. KENNEDY of Minnesota, Mrs. MYRICK, Mr. COLE, Mr. BEAUPREZ, Mrs. CUBIN, Mrs. BONO, Mr. ISSA, Mr. SAXTON, Mr. BRADY of Texas, Mr. BLUNT, Mr. ADERHOLT, Mrs. MUSGRAVE, Mr. LUCAS of Oklahoma, Mr. HENSARLING, Mr. KING of Iowa, Mr. BASS, Mr. BARRETT of South Carolina, Mr. HASTINGS of Washington, Mr. BOOZMAN, Mr. COMBEST, Mr. BROWN of South Carolina, Mr. HOLDEN, Mr. DEMINT, Mr. SWEENEY, Mr. LAHOOD, Mr. BRADLEY of New Hampshire, Mr. MANZULLO, and Mr. SIMPSON

MARCH 11, 2003

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

MARCH 11, 2003

Reported from the Committee on Energy and Commerce with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on February 5, 2003]

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## A BILL

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Help Efficient, Acces-*  
 5 *sible, Low-cost, Timely Healthcare (HEALTH) Act of*  
 6 *2003”.*

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) *FINDINGS.*—

3 (1) *EFFECT ON HEALTH CARE ACCESS AND*  
4 *COSTS.*—Congress finds that our current civil justice  
5 system is adversely affecting patient access to health  
6 care services, better patient care, and cost-efficient  
7 health care, in that the health care liability system is  
8 a costly and ineffective mechanism for resolving  
9 claims of health care liability and compensating in-  
10 jured patients, and is a deterrent to the sharing of in-  
11 formation among health care professionals which im-  
12 pedes efforts to improve patient safety and quality of  
13 care.

14 (2) *EFFECT ON INTERSTATE COMMERCE.*—Con-  
15 gress finds that the health care and insurance indus-  
16 tries are industries affecting interstate commerce and  
17 the health care liability litigation systems existing  
18 throughout the United States are activities that affect  
19 interstate commerce by contributing to the high costs  
20 of health care and premiums for health care liability  
21 insurance purchased by health care system providers.

22 (3) *EFFECT ON FEDERAL SPENDING.*—Congress  
23 finds that the health care liability litigation systems  
24 existing throughout the United States have a signifi-  
25 cant effect on the amount, distribution, and use of  
26 Federal funds because of—

1           (A) the large number of individuals who re-  
2           ceive health care benefits under programs oper-  
3           ated or financed by the Federal Government;

4           (B) the large number of individuals who  
5           benefit because of the exclusion from Federal  
6           taxes of the amounts spent to provide them with  
7           health insurance benefits; and

8           (C) the large number of health care pro-  
9           viders who provide items or services for which  
10          the Federal Government makes payments.

11       (b) *PURPOSE.*—It is the purpose of this Act to imple-  
12       ment reasonable, comprehensive, and effective health care  
13       liability reforms designed to—

14           (1) improve the availability of health care serv-  
15           ices in cases in which health care liability actions  
16           have been shown to be a factor in the decreased avail-  
17           ability of services;

18           (2) reduce the incidence of “defensive medicine”  
19           and lower the cost of health care liability insurance,  
20           all of which contribute to the escalation of health care  
21           costs;

22           (3) ensure that persons with meritorious health  
23           care injury claims receive fair and adequate com-  
24           pensation, including reasonable noneconomic dam-  
25           ages;

1           (4) *improve the fairness and cost-effectiveness of*  
 2           *our current health care liability system to resolve dis-*  
 3           *putes over, and provide compensation for, health care*  
 4           *liability by reducing uncertainty in the amount of*  
 5           *compensation provided to injured individuals; and*

6           (5) *provide an increased sharing of information*  
 7           *in the health care system which will reduce unin-*  
 8           *tended injury and improve patient care.*

9   **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

10       *The time for the commencement of a health care law-*  
 11       *suit shall be 3 years after the date of manifestation of injury*  
 12       *or 1 year after the claimant discovers, or through the use*  
 13       *of reasonable diligence should have discovered, the injury,*  
 14       *whichever occurs first. In no event shall the time for com-*  
 15       *mencement of a health care lawsuit exceed 3 years after the*  
 16       *date of manifestation of injury unless tolled for any of the*  
 17       *following:*

18           (1) *Upon proof of fraud;*

19           (2) *Intentional concealment; or*

20           (3) *The presence of a foreign body, which has no*  
 21       *therapeutic or diagnostic purpose or effect, in the per-*  
 22       *son of the injured person.*

23       *Actions by a minor shall be commenced within 3 years from*  
 24       *the date of the alleged manifestation of injury except that*  
 25       *actions by a minor under the full age of 6 years shall be*

1 commenced within 3 years of manifestation of injury or  
 2 prior to the minor's 8th birthday, whichever provides a  
 3 longer period. Such time limitation shall be tolled for mi-  
 4 nors for any period during which a parent or guardian  
 5 and a health care provider or health care organization have  
 6 committed fraud or collusion in the failure to bring an ac-  
 7 tion on behalf of the injured minor.

8 **SEC. 4. COMPENSATING PATIENT INJURY.**

9 (a) *UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL*  
 10 *ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.*—In any  
 11 health care lawsuit, the full amount of a claimant's eco-  
 12 nomic loss may be fully recovered without limitation.

13 (b) *ADDITIONAL NONECONOMIC DAMAGES.*—In any  
 14 health care lawsuit, the amount of noneconomic damages  
 15 recovered may be as much as \$250,000, regardless of the  
 16 number of parties against whom the action is brought or  
 17 the number of separate claims or actions brought with re-  
 18 spect to the same occurrence.

19 (c) *NO DISCOUNT OF AWARD FOR NONECONOMIC DAM-*  
 20 *AGES.*—In any health care lawsuit, an award for future  
 21 noneconomic damages shall not be discounted to present  
 22 value. The jury shall not be informed about the maximum  
 23 award for noneconomic damages. An award for non-  
 24 economic damages in excess of \$250,000 shall be reduced  
 25 either before the entry of judgment, or by amendment of

1 the judgment after entry of judgment, and such reduction  
2 shall be made before accounting for any other reduction in  
3 damages required by law. If separate awards are rendered  
4 for past and future noneconomic damages and the combined  
5 awards exceed \$250,000, the future noneconomic damages  
6 shall be reduced first.

7 (d) *FAIR SHARE RULE.*—In any health care lawsuit,  
8 each party shall be liable for that party’s several share of  
9 any damages only and not for the share of any other person.  
10 Each party shall be liable only for the amount of damages  
11 allocated to such party in direct proportion to such party’s  
12 percentage of responsibility. A separate judgment shall be  
13 rendered against each such party for the amount allocated  
14 to such party. For purposes of this section, the trier of fact  
15 shall determine the proportion of responsibility of each  
16 party for the claimant’s harm.

17 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

18 (a) *COURT SUPERVISION OF SHARE OF DAMAGES AC-*  
19 *TUALLY PAID TO CLAIMANTS.*—In any health care lawsuit,  
20 the court shall supervise the arrangements for payment of  
21 damages to protect against conflicts of interest that may  
22 have the effect of reducing the amount of damages awarded  
23 that are actually paid to claimants. In particular, in any  
24 health care lawsuit in which the attorney for a party claims  
25 a financial stake in the outcome by virtue of a contingent

1 *fee, the court shall have the power to restrict the payment*  
 2 *of a claimant's damage recovery to such attorney, and to*  
 3 *redirect such damages to the claimant based upon the inter-*  
 4 *ests of justice and principles of equity. In no event shall*  
 5 *the total of all contingent fees for representing all claimants*  
 6 *in a health care lawsuit exceed the following limits:*

7           (1) *40 percent of the first \$50,000 recovered by*  
 8           *the claimant(s).*

9           (2) *33<sup>1</sup>/<sub>3</sub> percent of the next \$50,000 recovered by*  
 10          *the claimant(s).*

11          (3) *25 percent of the next \$500,000 recovered by*  
 12          *the claimant(s).*

13          (4) *15 percent of any amount by which the re-*  
 14          *covery by the claimant(s) is in excess of \$600,000.*

15          (b) *APPLICABILITY.—The limitations in this section*  
 16 *shall apply whether the recovery is by judgment, settlement,*  
 17 *mediation, arbitration, or any other form of alternative dis-*  
 18 *pute resolution. In a health care lawsuit involving a minor*  
 19 *or incompetent person, a court retains the authority to au-*  
 20 *thorize or approve a fee that is less than the maximum per-*  
 21 *mitted under this section.*

22 ***SEC. 6. ADDITIONAL HEALTH BENEFITS.***

23          *In any health care lawsuit, any party may introduce*  
 24 *evidence of collateral source benefits. If a party elects to in-*  
 25 *troduce such evidence, any opposing party may introduce*



1 *evidence of any amount paid or contributed or reasonably*  
 2 *likely to be paid or contributed in the future by or on behalf*  
 3 *of the opposing party to secure the right to such collateral*  
 4 *source benefits. No provider of collateral source benefits*  
 5 *shall recover any amount against the claimant or receive*  
 6 *any lien or credit against the claimant's recovery or be eq-*  
 7 *uitably or legally subrogated to the right of the claimant*  
 8 *in a health care lawsuit. This section shall apply to any*  
 9 *health care lawsuit that is settled as well as a health care*  
 10 *lawsuit that is resolved by a fact finder. This section shall*  
 11 *not apply to section 1862(b) (42 U.S.C. 1395y(b)) or section*  
 12 *1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social Secu-*  
 13 *rity Act.*

14 **SEC. 7. PUNITIVE DAMAGES.**

15       (a) *IN GENERAL.*—*Punitive damages may, if other-*  
 16 *wise permitted by applicable State or Federal law, be*  
 17 *awarded against any person in a health care lawsuit only*  
 18 *if it is proven by clear and convincing evidence that such*  
 19 *person acted with malicious intent to injure the claimant,*  
 20 *or that such person deliberately failed to avoid unnecessary*  
 21 *injury that such person knew the claimant was substan-*  
 22 *tially certain to suffer. In any health care lawsuit where*  
 23 *no judgment for compensatory damages is rendered against*  
 24 *such person, no punitive damages may be awarded with*  
 25 *respect to the claim in such lawsuit. No demand for puni-*

1 *tive damages shall be included in a health care lawsuit as*  
 2 *initially filed. A court may allow a claimant to file an*  
 3 *amended pleading for punitive damages only upon a mo-*  
 4 *tion by the claimant and after a finding by the court, upon*  
 5 *review of supporting and opposing affidavits or after a*  
 6 *hearing, after weighing the evidence, that the claimant has*  
 7 *established by a substantial probability that the claimant*  
 8 *will prevail on the claim for punitive damages. At the re-*  
 9 *quest of any party in a health care lawsuit, the trier of*  
 10 *fact shall consider in a separate proceeding—*

11 *(1) whether punitive damages are to be awarded*  
 12 *and the amount of such award; and*

13 *(2) the amount of punitive damages following a*  
 14 *determination of punitive liability.*

15 *If a separate proceeding is requested, evidence relevant only*  
 16 *to the claim for punitive damages, as determined by appli-*  
 17 *cable State law, shall be inadmissible in any proceeding*  
 18 *to determine whether compensatory damages are to be*  
 19 *awarded.*

20 *(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—*

21 *(1) FACTORS CONSIDERED.—In determining the*  
 22 *amount of punitive damages, if awarded, in a health*  
 23 *care lawsuit, the trier of fact shall consider only the*  
 24 *following:*

1           (A) the severity of the harm caused by the  
2           conduct of such party;

3           (B) the duration of the conduct or any con-  
4           cealment of it by such party;

5           (C) the profitability of the conduct to such  
6           party;

7           (D) the number of products sold or medical  
8           procedures rendered for compensation, as the  
9           case may be, by such party, of the kind causing  
10          the harm complained of by the claimant;

11          (E) any criminal penalties imposed on such  
12          party, as a result of the conduct complained of  
13          by the claimant; and

14          (F) the amount of any civil fines assessed  
15          against such party as a result of the conduct  
16          complained of by the claimant.

17          (2) *MAXIMUM AWARD.*—The amount of punitive  
18          damages, if awarded, in a health care lawsuit may be  
19          as much as \$250,000 or as much as two times the  
20          amount of economic damages awarded, whichever is  
21          greater. The jury shall not be informed of this limita-  
22          tion.

23          (c) *NO PUNITIVE DAMAGES FOR PRODUCTS THAT*  
24          *COMPLY WITH FDA STANDARDS.*—

1           (1) *IN GENERAL.*—No punitive damages may be  
2           awarded against the manufacturer or distributor of a  
3           medical product based on a claim that such product  
4           caused the claimant’s harm where—

5                   (A)(i) such medical product was subject to  
6                   premarket approval or clearance by the Food  
7                   and Drug Administration with respect to the  
8                   safety of the formulation or performance of the  
9                   aspect of such medical product which caused the  
10                  claimant’s harm or the adequacy of the pack-  
11                  aging or labeling of such medical product; and

12                  (ii) such medical product was so approved  
13                  or cleared; or

14                  (B) such medical product is generally recog-  
15                  nized among qualified experts as safe and effec-  
16                  tive pursuant to conditions established by the  
17                  Food and Drug Administration and applicable  
18                  Food and Drug Administration regulations, in-  
19                  cluding without limitation those related to pack-  
20                  aging and labeling, unless the Food and Drug  
21                  Administration has determined that such med-  
22                  ical product was not manufactured or distrib-  
23                  uted in substantial compliance with applicable  
24                  Food and Drug Administration statutes and reg-  
25                  ulations.

1           (2) *LIABILITY OF HEALTH CARE PROVIDERS.*—A  
2       *health care provider who prescribes, or who dispenses*  
3       *pursuant to a prescription, a drug or device (includ-*  
4       *ing blood products) approved by the Food and Drug*  
5       *Administration shall not be named as a party to a*  
6       *product liability lawsuit involving such drug or de-*  
7       *vice and shall not be liable to a claimant in a class*  
8       *action lawsuit against the manufacturer, distributor,*  
9       *or product seller of such drug or device.*

10          (3) *PACKAGING.*—*In a health care lawsuit for*  
11       *harm which is alleged to relate to the adequacy of the*  
12       *packaging or labeling of a drug which is required to*  
13       *have tamper-resistant packaging under regulations of*  
14       *the Secretary of Health and Human Services (includ-*  
15       *ing labeling regulations related to such packaging),*  
16       *the manufacturer or product seller of the drug shall*  
17       *not be held liable for punitive damages unless such*  
18       *packaging or labeling is found by the trier of fact by*  
19       *clear and convincing evidence to be substantially out*  
20       *of compliance with such regulations.*

21          (4) *EXCEPTION.*—*Paragraph (1) shall not apply*  
22       *in any health care lawsuit in which—*

23                (A) *a person, before or after premarket ap-*  
24                *proval or clearance of such medical product,*  
25                *knowingly misrepresented to or withheld from*

1           *the Food and Drug Administration information*  
 2           *that is required to be submitted under the Fed-*  
 3           *eral Food, Drug, and Cosmetic Act (21 U.S.C.*  
 4           *301 et seq.) or section 351 of the Public Health*  
 5           *Service Act (42 U.S.C. 262) that is material and*  
 6           *is causally related to the harm which the claim-*  
 7           *ant allegedly suffered; or*

8           *(B) a person made an illegal payment to an*  
 9           *official of the Food and Drug Administration for*  
 10          *the purpose of either securing or maintaining*  
 11          *approval or clearance of such medical product.*

12   **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
 13           **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
 14           **SUITS.**

15          *(a) IN GENERAL.—In any health care lawsuit, if an*  
 16          *award of future damages, without reduction to present*  
 17          *value, equaling or exceeding \$50,000 is made against a*  
 18          *party with sufficient insurance or other assets to fund a*  
 19          *periodic payment of such a judgment, the court shall, at*  
 20          *the request of any party, enter a judgment ordering that*  
 21          *the future damages be paid by periodic payments in accord-*  
 22          *ance with the Uniform Periodic Payment of Judgments Act*  
 23          *promulgated by the National Conference of Commissioners*  
 24          *on Uniform State Laws.*

1       (b) *APPLICABILITY.*—*This section applies to all ac-*  
 2       *tions which have not been first set for trial or retrial before*  
 3       *the effective date of this Act.*

4       ***SEC. 9. DEFINITIONS.***

5       *In this Act:*

6               (1) *ALTERNATIVE DISPUTE RESOLUTION SYSTEM;*  
 7       *ADR.*—*The term “alternative dispute resolution sys-*  
 8       *tem” or “ADR” means a system that provides for the*  
 9       *resolution of health care lawsuits in a manner other*  
 10       *than through a civil action brought in a State or Fed-*  
 11       *eral court.*

12              (2) *CLAIMANT.*—*The term “claimant” means*  
 13       *any person who brings a health care lawsuit, includ-*  
 14       *ing a person who asserts or claims a right to legal or*  
 15       *equitable contribution, indemnity or subrogation,*  
 16       *arising out of a health care liability claim or action,*  
 17       *and any person on whose behalf such a claim is as-*  
 18       *serted or such an action is brought, whether deceased,*  
 19       *incompetent, or a minor.*

20              (3) *COLLATERAL SOURCE BENEFITS.*—*The term*  
 21       *“collateral source benefits” means any amount paid*  
 22       *or reasonably likely to be paid in the future to or on*  
 23       *behalf of the claimant, or any service, product or*  
 24       *other benefit provided or reasonably likely to be pro-*  
 25       *vided in the future to or on behalf of the claimant,*

1       *as a result of the injury or wrongful death, pursuant*  
2       *to—*

3               *(A) any State or Federal health, sickness,*  
4               *income-disability, accident, or workers' com-*  
5               *pensation law;*

6               *(B) any health, sickness, income-disability,*  
7               *or accident insurance that provides health bene-*  
8               *fits or income-disability coverage;*

9               *(C) any contract or agreement of any*  
10              *group, organization, partnership, or corporation*  
11              *to provide, pay for, or reimburse the cost of med-*  
12              *ical, hospital, dental, or income disability bene-*  
13              *fits; and*

14              *(D) any other publicly or privately funded*  
15              *program.*

16              *(4) COMPENSATORY DAMAGES.—The term “com-*  
17              *pensatory damages” means objectively verifiable mon-*  
18              *etary losses incurred as a result of the provision of,*  
19              *use of, or payment for (or failure to provide, use, or*  
20              *pay for) health care services or medical products, such*  
21              *as past and future medical expenses, loss of past and*  
22              *future earnings, cost of obtaining domestic services,*  
23              *loss of employment, and loss of business or employ-*  
24              *ment opportunities, damages for physical and emo-*  
25              *tional pain, suffering, inconvenience, physical im-*



1      *pairment, mental anguish, disfigurement, loss of en-*  
2      *joyment of life, loss of society and companionship,*  
3      *loss of consortium (other than loss of domestic serv-*  
4      *ice), hedonic damages, injury to reputation, and all*  
5      *other nonpecuniary losses of any kind or nature. The*  
6      *term “compensatory damages” includes economic*  
7      *damages and noneconomic damages, as such terms*  
8      *are defined in this section.*

9            (5) *CONTINGENT FEE.*—*The term “contingent*  
10      *fee” includes all compensation to any person or per-*  
11      *sons which is payable only if a recovery is effected on*  
12      *behalf of one or more claimants.*

13            (6) *ECONOMIC DAMAGES.*—*The term “economic*  
14      *damages” means objectively verifiable monetary losses*  
15      *incurred as a result of the provision of, use of, or*  
16      *payment for (or failure to provide, use, or pay for)*  
17      *health care services or medical products, such as past*  
18      *and future medical expenses, loss of past and future*  
19      *earnings, cost of obtaining domestic services, loss of*  
20      *employment, and loss of business or employment op-*  
21      *portunities.*

22            (7) *HEALTH CARE LAWSUIT.*—*The term “health*  
23      *care lawsuit” means any health care liability claim*  
24      *concerning the provision of health care goods or serv-*  
25      *ices, or any medical product, affecting interstate com-*

1        *merce, or any health care liability action concerning*  
2        *the provision of health care goods or services, or any*  
3        *medical product, affecting interstate commerce,*  
4        *brought in a State or Federal court or pursuant to*  
5        *an alternative dispute resolution system, against a*  
6        *health care provider, a health care organization, or*  
7        *the manufacturer, distributor, supplier, marketer,*  
8        *promoter, or seller of a medical product, regardless of*  
9        *the theory of liability on which the claim is based, or*  
10       *the number of claimants, plaintiffs, defendants, or*  
11       *other parties, or the number of claims or causes of ac-*  
12       *tion, in which the claimant alleges a health care li-*  
13       *ability claim.*

14                (8) *HEALTH CARE LIABILITY ACTION.*—*The term*  
15        *“health care liability action” means a civil action*  
16        *brought in a State or Federal Court or pursuant to*  
17        *an alternative dispute resolution system, against a*  
18        *health care provider, a health care organization, or*  
19        *the manufacturer, distributor, supplier, marketer,*  
20        *promoter, or seller of a medical product, regardless of*  
21        *the theory of liability on which the claim is based, or*  
22        *the number of plaintiffs, defendants, or other parties,*  
23        *or the number of causes of action, in which the claim-*  
24        *ant alleges a health care liability claim.*

1           (9) *HEALTH CARE LIABILITY CLAIM.*—*The term*  
2           *“health care liability claim” means a demand by any*  
3           *person, whether or not pursuant to ADR, against a*  
4           *health care provider, health care organization, or the*  
5           *manufacturer, distributor, supplier, marketer, pro-*  
6           *moter, or seller of a medical product, including, but*  
7           *not limited to, third-party claims, cross-claims,*  
8           *counter-claims, or contribution claims, which are*  
9           *based upon the provision of, use of, or payment for*  
10          *(or the failure to provide, use, or pay for) health care*  
11          *services or medical products, regardless of the theory*  
12          *of liability on which the claim is based, or the num-*  
13          *ber of plaintiffs, defendants, or other parties, or the*  
14          *number of causes of action.*

15          (10) *HEALTH CARE ORGANIZATION.*—*The term*  
16          *“health care organization” means any person or enti-*  
17          *ty which is obligated to provide or pay for health ben-*  
18          *efits under any health plan, including any person or*  
19          *entity acting under a contract or arrangement with*  
20          *a health care organization to provide or administer*  
21          *any health benefit.*

22          (11) *HEALTH CARE PROVIDER.*—*The term*  
23          *“health care provider” means any person or entity re-*  
24          *quired by State or Federal laws or regulations to be*  
25          *licensed, registered, or certified to provide health care*

1        *services, and being either so licensed, registered, or*  
2        *certified, or exempted from such requirement by other*  
3        *statute or regulation.*

4            (12) *HEALTH CARE GOODS OR SERVICES.*—*The*  
5        *term “health care goods or services” means any goods*  
6        *or services provided by a health care organization,*  
7        *provider, or by any individual working under the su-*  
8        *per vision of a health care provider, that relate to the*  
9        *diagnosis, prevention, or treatment of any human dis-*  
10       *ease or impairment, or the assessment of the health of*  
11       *human beings.*

12           (13) *MALICIOUS INTENT TO INJURE.*—*The term*  
13       *“malicious intent to injure” means intentionally*  
14       *causing or attempting to cause physical injury other*  
15       *than providing health care goods or services.*

16           (14) *MEDICAL PRODUCT.*—*The term “medical*  
17       *product” means a drug or device intended for hu-*  
18       *mans, and the terms “drug” and “device” have the*  
19       *meanings given such terms in sections 201(g)(1) and*  
20       *201(h) of the Federal Food, Drug and Cosmetic Act*  
21       *(21 U.S.C. 321), respectively, including any compo-*  
22       *nent or raw material used therein, but excluding*  
23       *health care services.*

24           (15) *NONECONOMIC DAMAGES.*—*The term “non-*  
25       *economic damages” means damages for physical and*

1       *emotional pain, suffering, inconvenience, physical im-*  
2       *pairment, mental anguish, disfigurement, loss of en-*  
3       *joyment of life, loss of society and companionship,*  
4       *loss of consortium (other than loss of domestic serv-*  
5       *ice), hedonic damages, injury to reputation, and all*  
6       *other nonpecuniary losses of any kind or nature.*

7           (16) *PUNITIVE DAMAGES.*—*The term “punitive*  
8       *damages” means damages awarded, for the purpose of*  
9       *punishment or deterrence, and not solely for compen-*  
10      *satory purposes, against a health care provider,*  
11      *health care organization, or a manufacturer, dis-*  
12      *tributor, or supplier of a medical product. Punitive*  
13      *damages are neither economic nor noneconomic dam-*  
14      *ages.*

15          (17) *RECOVERY.*—*The term “recovery” means*  
16      *the net sum recovered after deducting any disburse-*  
17      *ments or costs incurred in connection with prosecu-*  
18      *tion or settlement of the claim, including all costs*  
19      *paid or advanced by any person. Costs of health care*  
20      *incurred by the plaintiff and the attorneys’ office*  
21      *overhead costs or charges for legal services are not de-*  
22      *ductible disbursements or costs for such purpose.*

23          (18) *STATE.*—*The term “State” means each of*  
24      *the several States, the District of Columbia, the Com-*  
25      *monwealth of Puerto Rico, the Virgin Islands, Guam,*

1       *American Samoa, the Northern Mariana Islands, the*  
2       *Trust Territory of the Pacific Islands, and any other*  
3       *territory or possession of the United States, or any*  
4       *political subdivision thereof.*

5       **SEC. 10. EFFECT ON OTHER LAWS.**

6       (a) *VACCINE INJURY.*—

7               (1) *To the extent that title XXI of the Public*  
8       *Health Service Act establishes a Federal rule of law*  
9       *applicable to a civil action brought for a vaccine-re-*  
10       *lated injury or death—*

11               (A) *this Act does not affect the application*  
12       *of the rule of law to such an action; and*

13               (B) *any rule of law prescribed by this Act*  
14       *in conflict with a rule of law of such title XXI*  
15       *shall not apply to such action.*

16               (2) *If there is an aspect of a civil action brought*  
17       *for a vaccine-related injury or death to which a Fed-*  
18       *eral rule of law under title XXI of the Public Health*  
19       *Service Act does not apply, then this Act or otherwise*  
20       *applicable law (as determined under this Act) will*  
21       *apply to such aspect of such action.*

22       (b) *OTHER FEDERAL LAW.*—*Except as provided in*  
23       *this section, nothing in this Act shall be deemed to affect*  
24       *any defense available to a defendant in a health care law-*  
25       *suit or action under any other provision of Federal law.*

1 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**

2 **RIGHTS.**

3 (a) *HEALTH CARE LAWSUITS.*—The provisions gov-  
4 erning health care lawsuits set forth in this Act preempt,  
5 subject to subsections (b) and (c), State law to the extent  
6 that State law prevents the application of any provisions  
7 of law established by or under this Act. The provisions gov-  
8 erning health care lawsuits set forth in this Act supersede  
9 chapter 171 of title 28, United States Code, to the extent  
10 that such chapter—

11 (1) provides for a greater amount of damages or  
12 contingent fees, a longer period in which a health care  
13 lawsuit may be commenced, or a reduced applica-  
14 bility or scope of periodic payment of future damages,  
15 than provided in this Act; or

16 (2) prohibits the introduction of evidence regard-  
17 ing collateral source benefits, or mandates or permits  
18 subrogation or a lien on collateral source benefits.

19 (b) *PROTECTION OF STATES' RIGHTS.*—Any issue that  
20 is not governed by any provision of law established by or  
21 under this Act (including State standards of negligence)  
22 shall be governed by otherwise applicable State or Federal  
23 law. This Act does not preempt or supersede any law that  
24 imposes greater protections (such as a shorter statute of lim-  
25 itations) for health care providers and health care organiza-

1 tions from liability, loss, or damages than those provided  
2 by this Act.

3 (c) *STATE FLEXIBILITY*.—No provision of this Act  
4 shall be construed to preempt—

5 (1) any State law (whether effective before, on, or  
6 after the date of the enactment of this Act) that speci-  
7 fies a particular monetary amount of compensatory  
8 or punitive damages (or the total amount of damages)  
9 that may be awarded in a health care lawsuit, re-  
10 gardless of whether such monetary amount is greater  
11 or lesser than is provided for under this Act, notwith-  
12 standing section 4(a); or

13 (2) any defense available to a party in a health  
14 care lawsuit under any other provision of State or  
15 Federal law.

16 ***SEC. 12. APPLICABILITY; EFFECTIVE DATE.***

17 This Act shall apply to any health care lawsuit  
18 brought in a Federal or State court, or subject to an alter-  
19 native dispute resolution system, that is initiated on or  
20 after the date of the enactment of this Act, except that any  
21 health care lawsuit arising from an injury occurring prior  
22 to the date of the enactment of this Act shall be governed  
23 by the applicable statute of limitations provisions in effect  
24 at the time the injury occurred.



1 **SEC. 13. SENSE OF CONGRESS.**

2 *It is the sense of Congress that a health insurer should*  
3 *be liable for damages for harm caused when it makes a deci-*  
4 *sion as to what care is medically necessary and appro-*  
5 *priate.*

6 **SECTION 1. SHORT TITLE.**

7 **This Act may be cited as the “Help Effi-**  
8 **cient, Accessible, Low-cost, Timely Healthcare**  
9 **(HEALTH) Act of 2003”.**

10 **SEC. 2. FINDINGS AND PURPOSE.**

11 **(a) FINDINGS.—**

12 **(1) EFFECT ON HEALTH CARE ACCESS**  
13 **AND COSTS.—Congress finds that our cur-**  
14 **rent civil justice system is adversely af-**  
15 **fecting patient access to health care serv-**  
16 **ices, better patient care, and cost-effi-**  
17 **cient health care, in that the health care**  
18 **liability system is a costly and ineffective**  
19 **mechanism for resolving claims of health**  
20 **care liability and compensating injured**  
21 **patients, and is a deterrent to the sharing**  
22 **of information among health care profes-**  
23 **sionals which impedes efforts to improve**  
24 **patient safety and quality of care.**

25 **(2) EFFECT ON INTERSTATE COM-**  
26 **MERCE.—Congress finds that the health**

1        **care and insurance industries are indus-**  
2        **tries affecting interstate commerce and**  
3        **the health care liability litigation systems**  
4        **existing throughout the United States are**  
5        **activities that affect interstate commerce**  
6        **by contributing to the high costs of**  
7        **health care and premiums for health care**  
8        **liability insurance purchased by health**  
9        **care system providers.**

10        **(3) EFFECT ON FEDERAL SPENDING.—**  
11        **Congress finds that the health care liabil-**  
12        **ity litigation systems existing throughout**  
13        **the United States have a significant effect**  
14        **on the amount, distribution, and use of**  
15        **Federal funds because of—**

16                **(A) the large number of individ-**  
17                **uals who receive health care benefits**  
18                **under programs operated or financed**  
19                **by the Federal Government;**

20                **(B) the large number of individ-**  
21                **uals who benefit because of the exclu-**  
22                **sion from Federal taxes of the**  
23                **amounts spent to provide them with**  
24                **health insurance benefits; and**

1           **(C) the large number of health**  
2           **care providers who provide items or**  
3           **services for which the Federal Gov-**  
4           **ernment makes payments.**

5           **(b) PURPOSE.—It is the purpose of this Act**  
6           **to implement reasonable, comprehensive, and**  
7           **effective health care liability reforms de-**  
8           **signed to—**

9           **(1) improve the availability of health**  
10          **care services in cases in which health**  
11          **care liability actions have been shown to**  
12          **be a factor in the decreased availability**  
13          **of services;**

14          **(2) reduce the incidence of “defensive**  
15          **medicine” and lower the cost of health**  
16          **care liability insurance, all of which con-**  
17          **tribute to the escalation of health care**  
18          **costs;**

19          **(3) ensure that persons with meri-**  
20          **torious health care injury claims receive**  
21          **fair and adequate compensation, includ-**  
22          **ing reasonable noneconomic damages;**

23          **(4) improve the fairness and cost-ef-**  
24          **fectiveness of our current health care li-**  
25          **ability system to resolve disputes over,**

1       **and provide compensation for, health**  
2       **care liability by reducing uncertainty in**  
3       **the amount of compensation provided to**  
4       **injured individuals; and**

5               **(5) provide an increased sharing of**  
6       **information in the health care system**  
7       **which will reduce unintended injury and**  
8       **improve patient care.**

9       **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

10       **The time for the commencement of a**  
11       **health care lawsuit shall be 3 years after the**  
12       **date of manifestation of injury or 1 year after**  
13       **the claimant discovers, or through the use of**  
14       **reasonable diligence should have discovered,**  
15       **the injury, whichever occurs first. In no event**  
16       **shall the time for commencement of a health**  
17       **care lawsuit exceed 3 years after the date of**  
18       **manifestation of injury unless tolled for any**  
19       **of the following:**

20               **(1) Upon proof of fraud;**

21               **(2) Intentional concealment; or**

22               **(3) The presence of a foreign body,**  
23       **which has no therapeutic or diagnostic**  
24       **purpose or effect, in the person of the in-**  
25       **jured person.**

1 **Actions by a minor shall be commenced with-**  
2 **in 3 years from the date of the alleged mani-**  
3 **festation of injury except that actions by a**  
4 **minor under the full age of 6 years shall be**  
5 **commenced within 3 years of manifestation of**  
6 **injury or prior to the minor's 8th birthday,**  
7 **whichever provides a longer period. Such**  
8 **time limitation shall be tolled for minors for**  
9 **any period during which a parent or guardian**  
10 **and a health care provider or health care or-**  
11 **ganization have committed fraud or collusion**  
12 **in the failure to bring an action on behalf of**  
13 **the injured minor.**

14 **SEC. 4. COMPENSATING PATIENT INJURY.**

15 **(a) UNLIMITED AMOUNT OF DAMAGES FOR**  
16 **ACTUAL ECONOMIC LOSSES IN HEALTH CARE**  
17 **LAWSUITS.—In any health care lawsuit, noth-**  
18 **ing in this Act shall limit a claimant's recov-**  
19 **ery of the full amount of the available eco-**  
20 **nomic damages, notwithstanding the limita-**  
21 **tion in subsection (b).**

22 **(b) ADDITIONAL NONECONOMIC DAMAGES.—**  
23 **In any health care lawsuit, the amount of non-**  
24 **economic damages, if available, may be as**  
25 **much as \$250,000, regardless of the number of**

1 **parties against whom the action is brought or**  
2 **the number of separate claims or actions**  
3 **brought with respect to the same injury.**

4 **(c) NO DISCOUNT OF AWARD FOR NON-**  
5 **ECONOMIC DAMAGES.—For purposes of apply-**  
6 **ing the limitation in subsection (b), future**  
7 **noneconomic damages shall not be discounted**  
8 **to present value. The jury shall not be in-**  
9 **formed about the maximum award for non-**  
10 **economic damages. An award for non-**  
11 **economic damages in excess of \$250,000 shall**  
12 **be reduced either before the entry of judg-**  
13 **ment, or by amendment of the judgment after**  
14 **entry of judgment, and such reduction shall**  
15 **be made before accounting for any other re-**  
16 **duction in damages required by law. If sepa-**  
17 **rate awards are rendered for past and future**  
18 **noneconomic damages and the combined**  
19 **awards exceed \$250,000, the future non-**  
20 **economic damages shall be reduced first.**

21 **(d) FAIR SHARE RULE.—In any health care**  
22 **lawsuit, each party shall be liable for that par-**  
23 **ty's several share of any damages only and not**  
24 **for the share of any other person. Each party**  
25 **shall be liable only for the amount of damages**

1 allocated to such party in direct proportion to  
2 such party's percentage of responsibility.  
3 Whenever a judgment of liability is rendered  
4 as to any party, a separate judgment shall be  
5 rendered against each such party for the  
6 amount allocated to such party. For purposes  
7 of this section, the trier of fact shall deter-  
8 mine the proportion of responsibility of each  
9 party for the claimant's harm.

10 SEC. 5. MAXIMIZING PATIENT RECOVERY.

11 (a) COURT SUPERVISION OF SHARE OF DAM-  
12 AGES ACTUALLY PAID TO CLAIMANTS.—In any  
13 health care lawsuit, the court shall supervise  
14 the arrangements for payment of damages to  
15 protect against conflicts of interest that may  
16 have the effect of reducing the amount of  
17 damages awarded that are actually paid to  
18 claimants. In particular, in any health care  
19 lawsuit in which the attorney for a party  
20 claims a financial stake in the outcome by vir-  
21 tue of a contingent fee, the court shall have  
22 the power to restrict the payment of a claim-  
23 ant's damage recovery to such attorney, and  
24 to redirect such damages to the claimant  
25 based upon the interests of justice and prin-

1 **ciples of equity. In no event shall the total of**  
2 **all contingent fees for representing all claim-**  
3 **ants in a health care lawsuit exceed the fol-**  
4 **lowing limits:**

5 **(1) 40 percent of the first \$50,000 re-**  
6 **covered by the claimant(s).**

7 **(2) 33 $\frac{1}{3}$  percent of the next \$50,000 re-**  
8 **covered by the claimant(s).**

9 **(3) 25 percent of the next \$500,000 re-**  
10 **covered by the claimant(s).**

11 **(4) 15 percent of any amount by**  
12 **which the recovery by the claimant(s) is**  
13 **in excess of \$600,000.**

14 **(b) APPLICABILITY.—The limitations in this**  
15 **section shall apply whether the recovery is by**  
16 **judgment, settlement, mediation, arbitration,**  
17 **or any other form of alternative dispute reso-**  
18 **lution. In a health care lawsuit involving a**  
19 **minor or incompetent person, a court retains**  
20 **the authority to authorize or approve a fee**  
21 **that is less than the maximum permitted**  
22 **under this section. The requirement for court**  
23 **supervision in the first two sentences of sub-**  
24 **section (a) applies only in judicial pro-**  
25 **ceedings.**



1 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

2 **In any health care lawsuit involving in-**  
3 **jury or wrongful death, any party may intro-**  
4 **duce evidence of collateral source benefits. If**  
5 **a party elects to introduce such evidence, any**  
6 **opposing party may introduce evidence of any**  
7 **amount paid or contributed or reasonably**  
8 **likely to be paid or contributed in the future**  
9 **by or on behalf of the opposing party to se-**  
10 **cure the right to such collateral source bene-**  
11 **fits. No provider of collateral source benefits**  
12 **shall recover any amount against the claim-**  
13 **ant or receive any lien or credit against the**  
14 **claimant's recovery or be equitably or legally**  
15 **subrogated to the right of the claimant in a**  
16 **health care lawsuit involving injury or wrong-**  
17 **ful death. This section shall apply to any**  
18 **health care lawsuit that is settled as well as**  
19 **a health care lawsuit that is resolved by a fact**  
20 **finder. This section shall not apply to section**  
21 **1862(b) (42 U.S.C. 1395y(b)) or section**  
22 **1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the So-**  
23 **cial Security Act.**

24 **SEC. 7. PUNITIVE DAMAGES.**

25 **(a) IN GENERAL.—Punitive damages may, if**  
26 **otherwise permitted by applicable State or**

1 **Federal law, be awarded against any person**  
2 **in a health care lawsuit only if it is proven by**  
3 **clear and convincing evidence that such per-**  
4 **son acted with malicious intent to injure the**  
5 **claimant, or that such person deliberately**  
6 **failed to avoid unnecessary injury that such**  
7 **person knew the claimant was substantially**  
8 **certain to suffer. In any health care lawsuit**  
9 **where no judgment for compensatory dam-**  
10 **ages is rendered against such person, no puni-**  
11 **tive damages may be awarded with respect to**  
12 **the claim in such lawsuit. No demand for pu-**  
13 **nitive damages shall be included in a health**  
14 **care lawsuit as initially filed. A court may**  
15 **allow a claimant to file an amended pleading**  
16 **for punitive damages only upon a motion by**  
17 **the claimant and after a finding by the court,**  
18 **upon review of supporting and opposing affi-**  
19 **davits or after a hearing, after weighing the**  
20 **evidence, that the claimant has established by**  
21 **a substantial probability that the claimant**  
22 **will prevail on the claim for punitive dam-**  
23 **ages. At the request of any party in a health**  
24 **care lawsuit, the trier of fact shall consider in**  
25 **a separate proceeding—**

1           **(1) whether punitive damages are to**  
2           **be awarded and the amount of such**  
3           **award; and**

4           **(2) the amount of punitive damages**  
5           **following a determination of punitive li-**  
6           **ability.**

7 **If a separate proceeding is requested, evi-**  
8 **dence relevant only to the claim for punitive**  
9 **damages, as determined by applicable State**  
10 **law, shall be inadmissible in any proceeding**  
11 **to determine whether compensatory damages**  
12 **are to be awarded.**

13           **(b) DETERMINING AMOUNT OF PUNITIVE**  
14 **DAMAGES.—**

15           **(1) FACTORS CONSIDERED.—In deter-**  
16 **mining the amount of punitive damages,**  
17 **if awarded, in a health care lawsuit, the**  
18 **trier of fact shall consider only the fol-**  
19 **lowing:**

20                   **(A) the severity of the harm**  
21                   **caused by the conduct of such party;**

22                   **(B) the duration of the conduct or**  
23                   **any concealment of it by such party;**

24                   **(C) the profitability of the con-**  
25                   **duct to such party;**

1           **(D) the number of products sold**  
2           **or medical procedures rendered for**  
3           **compensation, as the case may be, by**  
4           **such party, of the kind causing the**  
5           **harm complained of by the claimant;**

6           **(E) any criminal penalties im-**  
7           **posed on such party, as a result of the**  
8           **conduct complained of by the claim-**  
9           **ant; and**

10          **(F) the amount of any civil fines**  
11          **assessed against such party as a re-**  
12          **sult of the conduct complained of by**  
13          **the claimant.**

14          **(2) MAXIMUM AWARD.—The amount of**  
15          **punitive damages, if awarded, in a health**  
16          **care lawsuit may be as much as \$250,000**  
17          **or as much as two times the amount of**  
18          **economic damages awarded, whichever is**  
19          **greater. The jury shall not be informed of**  
20          **this limitation.**

21          **(c) NO PUNITIVE DAMAGES FOR PRODUCTS IN**  
22          **COMPLIANCE WITH FDA STANDARDS.—**

23               **(1) PUNITIVE DAMAGES.—**

24               **(A) IN GENERAL.—In addition to**  
25               **the requirements of subsections (a)**

1           **and (b), punitive damages may not be**  
2           **awarded against the manufacturer or**  
3           **distributor of a medical product, or a**  
4           **supplier of any component or raw**  
5           **material of such medical product, on**  
6           **the basis that the harm to the claim-**  
7           **ant was caused by the lack of safety**  
8           **or effectiveness of the particular**  
9           **medical product involved, unless, the**  
10          **claimant demonstrates by clear and**  
11          **convincing evidence that—**

12               **(i) the manufacturer or dis-**  
13               **tributor of the particular medical**  
14               **product, or supplier of any com-**  
15               **ponent or raw material of such**  
16               **medical product, failed to comply**  
17               **with a specific requirement of the**  
18               **Federal Food, Drug, and Cosmetic**  
19               **Act, section 351 of the Public**  
20               **Health Service Act, or the regula-**  
21               **tions promulgated thereunder;**  
22               **and**

23               **(ii) the harm attributed to the**  
24               **particular medical product re-**  
25               **sulted from such failure to com-**

1           **ply with such specific statutory**  
2           **requirement or regulation.**

3           **(B) RULE OF CONSTRUCTION.—Sub-**  
4           **paragraph (A) may not be construed**  
5           **as establishing the obligation of the**  
6           **Food and Drug Administration to**  
7           **demonstrate affirmatively that a**  
8           **manufacturer, distributor, or supplier**  
9           **referred to in such subparagraph**  
10          **meets any of the conditions described**  
11          **in such subparagraph.**

12          **(2) LIABILITY OF HEALTH CARE PRO-**  
13          **VIDERS.—A health care provider who pre-**  
14          **scribes, or who dispenses pursuant to a**  
15          **prescription, a medical product ap-**  
16          **proved, licensed, or cleared by the Food**  
17          **and Drug Administration shall not be**  
18          **named as a party to a product liability**  
19          **lawsuit involving such product and shall**  
20          **not be liable to a claimant in a class ac-**  
21          **tion lawsuit against the manufacturer,**  
22          **distributor, or seller of such product.**  
23          **Nothing in this paragraph prevents a**  
24          **court from consolidating cases involving**  
25          **health care providers and cases involving**

1        **products liability claims against the man-**  
2        **ufacturer, distributor, or product seller**  
3        **of such medical product.**

4            **(3) EXCEPTION.—Paragraph (1) shall**  
5        **not apply in any health care lawsuit in**  
6        **which—**

7            **(A) a person knowingly misrepre-**  
8        **sented to the Food and Drug Adminis-**  
9        **tration information which is required**  
10       **to be submitted under the Federal**  
11       **Food, Drug, and Cosmetic Act (21**  
12       **U.S.C. 301 et seq.) or section 351 of**  
13       **the Public Health Service Act (42**  
14       **U.S.C. 262); or**

15           **(B) a person made an illegal pay-**  
16       **ment to a governmental official for**  
17       **the purpose of either (i) securing or**  
18       **maintaining approval, clearance, or**  
19       **licensure of such medical product or**  
20       **(ii) preventing an enforcement action.**

21       **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
22           **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
23           **SUITS.**

24           **(a) IN GENERAL.—In any health care law-**  
25       **suit, if an award of future damages, without**

1 reduction to present value, equaling or ex-  
2 ceeding \$50,000 is made against a party with  
3 sufficient insurance or other assets to fund a  
4 periodic payment of such a judgment, the  
5 court shall, at the request of any party, enter  
6 a judgment ordering that the future damages  
7 be paid by periodic payments.

8 (b) APPLICABILITY.—This section applies to  
9 all actions which have not been first set for  
10 trial or retrial before the effective date of this  
11 Act.

12 SEC. 9. DEFINITIONS.

13 In this Act:

14 (1) ALTERNATIVE DISPUTE RESOLUTION  
15 SYSTEM; ADR.—The term “alternative dis-  
16 pute resolution system” or “ADR” means  
17 a system that provides for the resolution  
18 of health care lawsuits in a manner other  
19 than through a civil action brought in a  
20 State or Federal court.

21 (2) CLAIMANT.—The term “claimant”  
22 means any person who brings a health  
23 care lawsuit, including a person who as-  
24 serts or claims a right to legal or equi-  
25 table contribution, indemnity or subroga-



1        **tion, arising out of a health care liability**  
2        **claim or action, and any person on whose**  
3        **behalf such a claim is asserted or such an**  
4        **action is brought, whether deceased, in-**  
5        **competent, or a minor.**

6            **(3) COLLATERAL SOURCE BENEFITS.—**  
7        **The term “collateral source benefits”**  
8        **means any amount paid or reasonably**  
9        **likely to be paid in the future to or on be-**  
10       **half of the claimant, or any service, prod-**  
11       **uct or other benefit provided or reason-**  
12       **ably likely to be provided in the future to**  
13       **or on behalf of the claimant, as a result of**  
14       **the injury or wrongful death, pursuant**  
15       **to—**

16            **(A) any State or Federal health,**  
17        **sickness, income-disability, accident,**  
18        **or workers’ compensation law;**

19            **(B) any health, sickness, income-**  
20        **disability, or accident insurance that**  
21        **provides health benefits or income-**  
22        **disability coverage;**

23            **(C) any contract or agreement of**  
24        **any group, organization, partnership,**  
25        **or corporation to provide, pay for, or**

1           reimburse the cost of medical, hos-  
2           pital, dental, or income disability ben-  
3           efits; and

4           (D) any other publicly or pri-  
5           vately funded program.

6           (4) COMPENSATORY DAMAGES.—The  
7           term “compensatory damages” means ob-  
8           jectively verifiable monetary losses in-  
9           curred as a result of the provision of, use  
10          of, or payment for (or failure to provide,  
11          use, or pay for) health care services or  
12          medical products, such as past and future  
13          medical expenses, loss of past and future  
14          earnings, cost of obtaining domestic serv-  
15          ices, loss of employment, and loss of busi-  
16          ness or employment opportunities, dam-  
17          ages for physical and emotional pain, suf-  
18          fering, inconvenience, physical impair-  
19          ment, mental anguish, disfigurement, loss  
20          of enjoyment of life, loss of society and  
21          companionship, loss of consortium (other  
22          than loss of domestic service), hedonic  
23          damages, injury to reputation, and all  
24          other nonpecuniary losses of any kind or  
25          nature. The term “compensatory dam-

1       **ages” includes economic damages and**  
2       **noneconomic damages, as such terms are**  
3       **defined in this section.**

4               **(5) CONTINGENT FEE.—The term “con-**  
5       **tingent fee” includes all compensation to**  
6       **any person or persons which is payable**  
7       **only if a recovery is effected on behalf of**  
8       **one or more claimants.**

9               **(6) ECONOMIC DAMAGES.—The term**  
10       **“economic damages” means objectively**  
11       **verifiable monetary losses incurred as a**  
12       **result of the provision of, use of, or pay-**  
13       **ment for (or failure to provide, use, or**  
14       **pay for) health care services or medical**  
15       **products, such as past and future medical**  
16       **expenses, loss of past and future earn-**  
17       **ings, cost of obtaining domestic services,**  
18       **loss of employment, and loss of business**  
19       **or employment opportunities.**

20               **(7) HEALTH CARE LAWSUIT.—The term**  
21       **“health care lawsuit” means any health**  
22       **care liability claim concerning the provi-**  
23       **sion of health care goods or services af-**  
24       **fecting interstate commerce, or any**  
25       **health care liability action concerning**

1       the provision of health care goods or  
2       services affecting interstate commerce,  
3       brought in a State or Federal court or  
4       pursuant to an alternative dispute resolu-  
5       tion system, against a health care pro-  
6       vider, a health care organization, or the  
7       manufacturer, distributor, supplier, mar-  
8       keter, promoter, or seller of a medical  
9       product, regardless of the theory of liabil-  
10      ity on which the claim is based, or the  
11      number of claimants, plaintiffs, defend-  
12      ants, or other parties, or the number of  
13      claims or causes of action, in which the  
14      claimant alleges a health care liability  
15      claim. Such term does not include a claim  
16      or action which is based on criminal li-  
17      ability; which seeks civil fines or pen-  
18      alties paid to Federal, State, or local gov-  
19      ernment; which is grounded in antitrust;  
20      or in which the dispute is over the price  
21      of health care goods or services.

22           **(8) HEALTH CARE LIABILITY ACTION.—**  
23      **The term “health care liability action”**  
24      **means a civil action brought in a State or**  
25      **Federal Court or pursuant to an alter-**

1     **native dispute resolution system, against**  
2     **a health care provider, a health care or-**  
3     **ganization, or the manufacturer, dis-**  
4     **tributor, supplier, marketer, promoter, or**  
5     **seller of a medical product, regardless of**  
6     **the theory of liability on which the claim**  
7     **is based, or the number of plaintiffs, de-**  
8     **fendants, or other parties, or the number**  
9     **of causes of action, in which the claimant**  
10    **alleges a health care liability claim.**

11       **(9) HEALTH CARE LIABILITY CLAIM.—The**  
12    **term “health care liability claim” means a**  
13    **demand by any person, whether or not**  
14    **pursuant to ADR, against a health care**  
15    **provider, health care organization, or the**  
16    **manufacturer, distributor, supplier, mar-**  
17    **keter, promoter, or seller of a medical**  
18    **product, including, but not limited to,**  
19    **third-party claims, cross-claims, counter-**  
20    **claims, or contribution claims, which are**  
21    **based upon the provision of, use of, or**  
22    **payment for (or the failure to provide,**  
23    **use, or pay for) health care services or**  
24    **medical products, regardless of the the-**  
25    **ory of liability on which the claim is**

1       **based, or the number of plaintiffs, de-**  
2       **fendants, or other parties, or the number**  
3       **of causes of action.**

4               **(10) HEALTH CARE ORGANIZATION.—The**  
5       **term “health care organization” means**  
6       **any person or entity which is obligated to**  
7       **provide or pay for health benefits under**  
8       **any health plan, including any person or**  
9       **entity acting under a contract or ar-**  
10       **rangement with a health care organiza-**  
11       **tion to provide or administer any health**  
12       **benefit.**

13               **(11) HEALTH CARE PROVIDER.—The**  
14       **term “health care provider” means any**  
15       **person or entity required by State or**  
16       **Federal laws or regulations to be li-**  
17       **censed, registered, or certified to provide**  
18       **health care services, and being either so**  
19       **licensed, registered, or certified, or ex-**  
20       **empted from such requirement by other**  
21       **statute or regulation.**

22               **(12) HEALTH CARE GOODS OR SERV-**  
23       **ICES.—The term “health care goods or**  
24       **services” means any goods or services**  
25       **provided by a health care organization,**

1 provider, or by any individual working  
2 under the supervision of a health care  
3 provider, that relates to the diagnosis,  
4 prevention, or treatment of any human  
5 disease or impairment, or the assessment  
6 or care of the health of human beings.

7 (13) MALICIOUS INTENT TO INJURE.—  
8 The term “malicious intent to injure”  
9 means intentionally causing or attempt-  
10 ing to cause physical injury other than  
11 providing health care goods or services.

12 (14) MEDICAL PRODUCT.—The term  
13 “medical product” means a drug, device,  
14 or biological product intended for hu-  
15 mans, and the terms “drug”, “device”, and  
16 “biological product” have the meanings  
17 given such terms in sections 201(g)(1) and  
18 201(h) of the Federal Food, Drug and Cos-  
19 metic Act (21 U.S.C. 321) and section  
20 351(a) of the Public Health Service Act  
21 (42 U.S.C. 262(a)), respectively, including  
22 any component or raw material used  
23 therein, but excluding health care serv-  
24 ices.

1           **(15) NONECONOMIC DAMAGES.—The**  
2           **term “noneconomic damages” means**  
3           **damages for physical and emotional pain,**  
4           **suffering, inconvenience, physical impair-**  
5           **ment, mental anguish, disfigurement, loss**  
6           **of enjoyment of life, loss of society and**  
7           **companionship, loss of consortium (other**  
8           **than loss of domestic service), hedonic**  
9           **damages, injury to reputation, and all**  
10          **other nonpecuniary losses of any kind or**  
11          **nature.**

12          **(16) PUNITIVE DAMAGES.—The term**  
13          **“punitive damages” means damages**  
14          **awarded, for the purpose of punishment**  
15          **or deterrence, and not solely for compen-**  
16          **satory purposes, against a health care**  
17          **provider, health care organization, or a**  
18          **manufacturer, distributor, or supplier of**  
19          **a medical product. Punitive damages are**  
20          **neither economic nor noneconomic dam-**  
21          **ages.**

22          **(17) RECOVERY.—The term “recovery”**  
23          **means the net sum recovered after de-**  
24          **ducting any disbursements or costs in-**  
25          **curred in connection with prosecution or**



1 settlement of the claim, including all  
2 costs paid or advanced by any person.  
3 Costs of health care incurred by the  
4 plaintiff and the attorneys' office over-  
5 head costs or charges for legal services  
6 are not deductible disbursements or costs  
7 for such purpose.

8 (18) STATE.—The term “State” means  
9 each of the several States, the District of  
10 Columbia, the Commonwealth of Puerto  
11 Rico, the Virgin Islands, Guam, American  
12 Samoa, the Northern Mariana Islands,  
13 the Trust Territory of the Pacific Islands,  
14 and any other territory or possession of  
15 the United States, or any political sub-  
16 division thereof.

17 SEC. 10. EFFECT ON OTHER LAWS.

18 (a) VACCINE INJURY.—

19 (1) To the extent that title XXI of the  
20 Public Health Service Act establishes a  
21 Federal rule of law applicable to a civil  
22 action brought for a vaccine-related in-  
23 jury or death—

4                   **(B) any rule of law prescribed by**  
5                   **this Act in conflict with a rule of law**  
6                   **of such title XXI shall not apply to**  
7                   **such action.**

8           **(2) If there is an aspect of a civil ac-**  
9           **tion brought for a vaccine-related injury**  
10          **or death to which a Federal rule of law**  
11          **under title XXI of the Public Health Serv-**  
12          **ice Act does not apply, then this Act or**  
13          **otherwise applicable law (as determined**  
14          **under this Act) will apply to such aspect**  
15          **of such action.**

**(b) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.**

21 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**  
22 **RIGHTS.**

23       **(a) HEALTH CARE LAWSUITS.—**The provi-  
24 **sions governing health care lawsuits set forth**  
25 **in this Act preempt, subject to subsections (b)**

1 and (c), State law to the extent that State law  
2 prevents the application of any provisions of  
3 law established by or under this Act. The pro-  
4 visions governing health care lawsuits set  
5 forth in this Act supersede chapter 171 of title  
6 28, United States Code, to the extent that such  
7 chapter—

8 (1) provides for a greater amount of  
9 damages or contingent fees, a longer pe-  
10 riod in which a health care lawsuit may  
11 be commenced, or a reduced applicability  
12 or scope of periodic payment of future  
13 damages, than provided in this Act; or

14 (2) prohibits the introduction of evi-  
15 dence regarding collateral source bene-  
16 fits, or mandates or permits subrogation  
17 or a lien on collateral source benefits.

18 (b) PROTECTION OF STATES' RIGHTS AND  
19 OTHER LAWS.—(1) Any issue that is not gov-  
20 erned by any provision of law established by  
21 or under this Act (including State standards  
22 of negligence) shall be governed by otherwise  
23 applicable State or Federal law.

24 (2) This Act shall not preempt or super-  
25 sede any State or Federal law that imposes

1 **greater procedural or substantive protections**  
2 **for health care providers and health care or-**  
3 **ganizations from liability, loss, or damages**  
4 **than those provided by this Act or create a**  
5 **cause of action.**

6 **(c) STATE FLEXIBILITY.—No provision of**  
7 **this Act shall be construed to preempt—**

8 **(1) any State law (whether effective**  
9 **before, on, or after the date of the enact-**  
10 **ment of this Act) that specifies a par-**  
11 **ticular monetary amount of compen-**  
12 **satory or punitive damages (or the total**  
13 **amount of damages) that may be awarded**  
14 **in a health care lawsuit, regardless of**  
15 **whether such monetary amount is great-**  
16 **er or lesser than is provided for under**  
17 **this Act, notwithstanding section 4(a); or**

18 **(2) any defense available to a party in**  
19 **a health care lawsuit under any other**  
20 **provision of State or Federal law.**

21 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

22 **This Act shall apply to any health care**  
23 **lawsuit brought in a Federal or State court,**  
24 **or subject to an alternative dispute resolution**  
25 **system, that is initiated on or after the date**

1 of the enactment of this Act, except that any  
2 health care lawsuit arising from an injury oc-  
3 ccurring prior to the date of the enactment of  
4 this Act shall be governed by the applicable  
5 statute of limitations provisions in effect at  
6 the time the injury occurred.

7 SEC. 13. SENSE OF CONGRESS.

8 It is the sense of Congress that a health  
9 insurer should be liable for damages for harm  
10 caused when it makes a decision as to what  
11 care is medically necessary and appropriate.

**Union Calendar No. 20**

108TH CONGRESS  
1ST SESSION

**H. R. 5**

**[Report No. 108-32, Parts I and II]**

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**A BILL**

To improve patient access to health care services  
and provide improved medical care by reducing  
the excessive burden the liability system places  
on the health care delivery system.

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MARCH 11, 2003

Reported from the Committee on the Judiciary with an  
amendment

MARCH 11, 2003

Reported from the Committee on Energy and Commerce  
with an amendment; committed to the Committee of  
the Whole House on the State of the Union and or-  
dered to be printed